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August 4, 2010

General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
Room 8220, 1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570

**RE: Yonkers Racing Corp.  
NLRB Case No. 2-RC-23503**

Dear Sir or Madame,

This law firm is counsel to Intervenor, Local 153, OPEIU in the above-captioned matter. Please accept this letter in lieu of a more formal brief as Intervenor's Opposition to the Request for Review filed by Petitioner, the Law Enforcement Employees Benevolent Association (herein "LEEBA" or "Petitioner").

In its brief, Petitioner contends that review of the Regional Director's July 21, 2010 Decision and Order is appropriate in accordance with Rule 102.67 of the National Labor Relations Board Rules and Regulations<sup>1</sup> since in Petitioner's view, "a substantial

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<sup>1</sup> In relevant part, Rule 102.67 (c) provides:

The Board will grant a request for review only where compelling reasons exist therefore. Accordingly, a request for review may be granted only upon one or more of the following grounds:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

question of law and policy is raised, the Regional Director is in error on a substantial factual issue and there are compelling reasons for reconsideration of important Board rules of policy.” Petitioner’s Brief, at 1. However, noticeably absent from what follows in Petitioner’s brief is any significant support, legal or factual, for what “substantial questions of law or policy” it raises, and whether such questions are raised by either “the absence of or departure from officially reported Board precedent.” Additionally, Petitioner’s brief fails to provide support for its contentions that the Regional Director erred on a substantial factual issue, and also fails to offer what compelling reasons might exist calling for the Board’s reconsideration of its rules or policy.

Instead, Petitioner’s brief simply repeats the same arguments and legal citations set forth in its Memorandum of Law filed with the Regional Director on July 12, 2010, and which the Regional Director duly noted, considered and specifically rejected in her July 21, 2010 Decision and Order. Suffice to say, Petitioner’s bare recitation of arguments and authorities already rejected by the Regional Director will not be addressed herein. However, Petitioner does make one assertion in its brief that deserves a response, when it argues that the Regional Director “erred in not considering the Petitioner’s equitable tolling argument.” Petitioner’s Brief, at 6. In support of this assertion, Petitioner again repeats arguments and authorities provided in its July 12, 2010 Memorandum of Law, yet Petitioner *does not* demonstrate how the Regional Director failed to consider the same. In fact, the Regional Director’s July 21, 2010 Decision demonstrates quite the contrary.

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(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

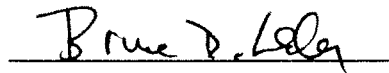
(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

The Regional Director's Decision begins, *inter alia*, by noting the position of the Employer (Yonker's Racing Corp.) that equitable tolling is not appropriate in this matter, since the Petitioner "was on notice that the NLRB had exerted jurisdiction over "casinos" for over a decade." July 21, 2010 Decision of Regional Director, Celeste J. Mattina, at 2-3. The Regional Director then noted the Employer's position that Petitioner's "inexcusable ignorance" of the law is not a basis for equitable relief." *Id.* at 3. The Regional Director also noted the Intervenor's contention that "Petitioner failed to exercise reasonable due diligence by not filing in both state and federal forums during the open period or after the expiration of the prior contract." *Id.*

Additionally, in the July 21, 2010 Decision, the Regional Director clearly considered that the Petitioner filed a timely petition with the New York State Employee Relations Board, but failed to file a petition with the Board until June 2010; six months *after* the relevant renewal contract was signed by the Employer and Local 153. *Id.* at 7. Contrary to Petitioner's assertion that the Regional Director failed to duly consider relevant factors in denying to apply equitable tolling, in truth the Regional Director noted that "the record establishes that Petitioner failed to act with due diligence and therefore, the doctrine of equitable tolling does not apply." *Id.* Lastly, the Regional Director cited to *Alternative Services, Adult Residential Care and Res-Care* in support of, and as explanation for the appropriate limits of extending the doctrine of equitable tolling, as well as to explain why Petitioner's request failed to measure up to the standard set forth in those cases. *Id.* at 8. Clearly, the Regional Director appropriately considered all relevant and appropriate factual and legal bases for Petitioner's request to apply equitable tolling to its Representation Petition.

For the reasons set forth above, Intervenor, Local 153, OPEIU respectfully requests that the Petitioner's Request for Review of the Regional Director's July 21, 2010 Decision and Order be denied.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Bruce D. Leder", is written over a horizontal line.

Bruce D. Leder

cc: Joseph DeGiuseppe, Jr., Esq.  
Terrence P. Dwyer, Esq.  
Richard Lanigan, L153  
Seth Goldstein, L153

### **CERTIFICATION OF SERVICE**


On August 11, 2010, I served a true copy of this Opposition to Petitioner's Request for Review via electronic mail to and First Class Mail to the following:

**Terrence P. Dwyer (TPDLAW@AOL.COM)**  
**222 Church Street**  
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**Joseph DeGiuseppe, Jr. (jdeguseppe@bpslaw.com)**  
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**One North Lexington Avenue**  
**White Plains, New York 10601**

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: August 11, 2010

  
MATTHEW G. CONNAUGHTON, ESQ.